

Honorable Marsha J. Pechman

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

DIANNE L. KELLEY and KENNETH  
HANSEN,

Plaintiffs,

v.

MICROSOFT CORPORATION, a Washington  
Corporation,

Defendant.

NO. C07-0475 MJP

PLAINTIFFS' RESPONSE TO  
MICROSOFT'S MOTION TO SEAL

CLASS ACTION

NOTE ON MOTION CALENDAR:  
December 11, 2007

Plaintiffs submit this response to Microsoft motion to seal. Dkt. No. 85.

**A. Introduction/Overview**

Although our opposition to this particular motion is limited, there is a fundamental and growing problem with Microsoft's control over the scope and nature of the documents being sealed in this case. Microsoft has marked as "Confidential" virtually every document produced through discovery to date. To the extent Microsoft's justification for maintaining the confidentiality of documents filed with the Court is based on broad notions of competitive harm, Microsoft's power to select which documents it designates "confidential" offers the temptation to

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1 designate with public perception in mind, rather than genuine trade secrecy. The public's right  
2  
3 to open courts demands vigilant watch against the indulgence of that temptation.  
4

5 With that said, we respond as follows:  
6

7 **B. Sundlie Declaration and Corresponding Text of Opposition Brief**  
8

9 Plaintiffs do not oppose sealing of the Sundlie Declaration, including Exhibits A through  
10  
11 F thereto. Plaintiffs also do not oppose Microsoft redacting the pages of its class certification  
12  
13 opposition brief that refer to the Sundlie declaration and exhibits. We believe such redactions  
14  
15 only would include approximately four lines of text from page 5.  
16


17 **C. Moline Declaration and Corresponding Text of Opposition Brief**  
18

19 Plaintiffs do not oppose sealing or redaction of the portion of the Moline Declaration  
20  
21 relating to Microsoft's sales figures. Plaintiffs also do not oppose Microsoft redacting the pages  
22  
23 of its class certification opposition brief that refer to this portion of the Moline Declaration. We  
24  
25 believe these redactions only would include approximately three lines of text on page 9.  
26

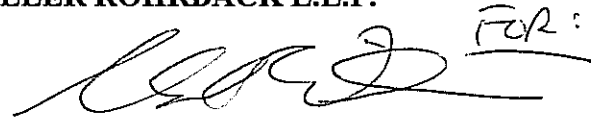
27 Plaintiffs oppose sealing or redaction of the portion of the Moline Declaration relating to  
28  
29 the overall size of the United States personal computing market. We do not see how the size of  
30  
31 the market can be "confidential." Microsoft argues that this information is important "because it  
32  
33 is used to provide an understanding of business performance within the industry, and it forms the  
34  
35 basis for business planning and forecasting within the industry." Dkt. No. 85 at 8:7-9. This may  
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37 be true. Microsoft's "understanding of [its] business performance," or Microsoft's "business  
38  
39 planning," or Microsoft's business "forecasting" may be sufficiently confidential to warrant  
40  
41 sealing. But the size of the market itself is not. Accordingly, this information should not be  
42  
43 sealed or redacted.  
44  
45

1 DATED this 6th day of December, 2007.

2  
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**CERTIFICATE OF SERVICE**

I hereby certify that on December 6, 2007, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following.

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